

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Charone Smith,)
)
Plaintiff,) No. 09 C 7791
) Judge Suzanne B. Conlon
v.)
)
Thomas J. Dart, Sheriff of Cook County,)
And Cook County, Illinois)
)
Defendants.)

**DEFENDANT SHERIFF'S MOTION TO
ALTER OR AMEND PURSUANT TO FRCP 59(e)**

Now comes the defendant Sheriff of Cook County, by and through his attorney ANITA ALVAREZ, State's Attorney of Cook County and her Assistants Pat Smith, and Maureen Hannon and pursuant to Fed.R.Civ.P.59(e) respectfully moves this Court to alter or amend its Order of April 27, 2010, stating as follows in support:

1. The Plaintiff filed a "Motion to Bar any Use of External Operations Daily Detainee Hospitalization Checklists" (hereinafter "Motion to Bar") [Dkt 17] because the Sheriff was unable to find the external operations documents on this plaintiff during the course of discovery.
2. The Sheriff has found the external operations documents on this plaintiff and they were tendered to Defense Counsel yesterday May 5, 2010 and faxed to Counsel for the Plaintiff at 4:00 that evening. A second hard copy was tendered to Plaintiff's counsel on May 6, 2010 prior to the deposition of the Plaintiff.
3. The deposition of the plaintiff did proceed on May 6, 2010 following the Plaintiff and her counsel's review of the documents. The documents at issue were not used by

counsel for the defendants during the deposition. The delay in production, although inconvenient, turned out to be harmless as all parties were allowed to see the records before the Plaintiff's deposition.

4. Recognizing that the decision to grant a motion for reconsideration is within the Court's sound discretion, (*Caisse Nationale de Credit Agricole v. CBI Indus., Inc.* 90 F.3d 1264, 1270 (7th Cir. 1996)), The Defendant Sheriff would like this Court to reconsider its ruling on April 27, 2010 and deny the motion to bar admission of said documents at the trial in this matter because the documents were recovered in advance of the depositions in this case.
5. The records of the external operations checklist are likely directly relevant to both parties as a potential record made at or near the time of the occurrence and which may make the existence of certain facts more or less probable. The Federal Rules of Evidence permit any evidence to be introduced at trial that is relevant, or likely to make the existence of any fact that is of consequence to the determination of the action more or less probable. (FRE 401)
6. The inability of the sheriff to locate these records earlier was not for the purpose of disrupting or deceiving the Plaintiff or the Court, but rather, an administrative delay in finding the documents. Plaintiff Charone Smith is one of many women detainees whose documents were pulled at the same time as the discovery in the class action before Judge Amy St. Eve was tendered.¹

¹ Class certification was denied on December 9th 2009 in *Zaborowski v. Dart*, 08 C 6946 As a result of the denial of class status, this is one of ten individually filed cases which will proceed separately.

CONCLUSION

Recognizing that district courts have broad discretion in discovery matters, *Semien v. Life Insurance Company of North America*, 436 F.3d 805, 713 (7th Cir. 2006), in light of the fact that the delay was harmless and the documents were recovered and reviewed by counsel prior to his client's deposition the Office of the Sheriff respectfully requests that this court reconsider the Motion To Bar and reverse its earlier ruling.

WHEREFORE, Defendants request that this Court reconsider if April 27th ruling and deny Plaintiff's Motion to Bar Any Use of "External Operations Daily Detainee Hospitalization Checklist."

Respectfully Submitted,

ANITA ALVAREZ
State's Attorney of Cook County
/s/ Maureen O. Hannon
Assistant State's Attorney
Attorney Code: 6206983

Patrick S. Smith
Deputy Supervisor

Maureen O. Hannon
Assistant State's Attorney
Conflicts Counsel Unit
69 W. Washington, 20th floor
Chicago, Illinois 60602
(312) 603-1422/ 1424